

## Designation of Competitive ETCs Advances the Public Interest

### I. A Competitive Universal Service System Benefits Consumers and is Required By the Act.

- Competition preserves and advances universal service by providing consumers with new services, access to technological and service innovations, and better customer service.
- Portability allows the marketplace to determine the services and service providers that best meet the needs of consumers, and creates a level playing field for carriers to compete.
- The 1996 Act requires portability and competitive neutrality. *See Alenco Communications v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000).

### II. Adopt Careful Reforms to the Process for Designating Competitive ETCs.

#### A. Clarify the “public interest” standard for designating CETCs in rural telco areas.

- The public interest standard must balance the benefits to rural consumers against the harm to rural consumers of designating an additional ETC. The impact of designating additional ETCs on the high-cost fund must be addressed in generic policy proceedings – not in individual ETC applications.
- The 1996 Act presumes that competition is in the public interest, and ETC proceedings must begin with that premise as a rebuttable presumption.
- State commissions may examine: (1) the benefits of competition to consumers, (2) the introduction of new technologies and services to rural consumers, (3) whether designation will lead to better coverage and higher-quality service, and (4) whether designation would cause any significant adverse impact to consumers.
- State commissions may not consider:
  - Criteria that would subject CETCs to regulations that were designed to control ILEC market power, such as equal access, pricing regulation, certification, and tariffing, would pose a barrier to entry into the market;
  - Regulations geared to ILEC technology, such as quality standards geared to copper loop transmission, would violate competitive and technological neutrality;
  - Strict numerical quotas, such as “no CETC designation where ILEC support is \$30 per month or more,” would be arbitrary and capricious and violate the Act.

#### B. Clarify an ETC’s Obligation To Serve Throughout The Designated Service Area

- To ensure that both CETCs and ILECs serve customers within the area in which they are designated as ETCs, require all carriers to show they are capable of extending service to new consumers throughout the designated service area within a specified time frame upon receiving a bona fide request (or will serve such customers via resale).

#### C. Clarify standards for disaggregating rural ILEC study areas for designation purposes.

- Establish a presumption against disaggregating rural ILEC study areas below the wire center, RSA, or BTA level – in such cases, both FCC and state PUC must approve.
- Establish a presumption in favor of disaggregating rural ILEC study areas at the wire center, RSA, or BTA level. This would recognize the gerrymandered nature of many rural ILEC study areas and the fact that many rural CMRS carriers are licensed at the RSA or BTA level. In such cases, the streamlined procedures in the current rules would apply.

### III. A Competitively Neutral System Is Needed to Verify That All ETCs – Including ILECs and CETCs – Are Using High-Cost Funds For the Intended Purposes.

- Replace the State certification process with a system of rigorous, verifiable and accountable certification by all ETCs (ILECs and CETCs), in which all ETCs would be required to file annual detailed certifications, in compliance with specified standards, showing that funds are being used for provision, maintenance, and upgrading of supported services and facilities (e.g., capital expenditures on network facilities).
- In the case of rate-of-return carriers, periodic independent audits would be used to verify proper classification and reporting of loop counts and network investments, compliance with cost accounting manuals and controls, compliance with affiliate transaction rules, proper booking of costs and recording of interest expenses, and other accounting matters.